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they held options issued subscription blanks, addressed to themselves, containing representations that the capital would be used for specified purposes. A large block of stock remained after the projects enumerated in the contract were consummated, and this they secretly appropriated. *Held,* that an action could not be maintained by stockholders to compel the promoters to account to the corporation for the stock taken. Hatch and Laughlin, JJ., *dissenting.*

A promoter occupies a fiduciary relation towards the corporation and stockholders, and if he retains secret profits, he is liable to account therefor. *Dickerman v. Trust Co.,* 176 U. S. 181; *Brewster v. Hatch,* 122 N. Y. 349; *Hayward v. Leeson,* 176 Mass. 310; *Gluckstein v. Barnes* (1900) App. Cas. 310; and it is not necessary to show a fraudulent intent—it is sufficient that the profits were made secretly. *Land Co. v. Loudenslager,* 55 N. J. Eq. 78; *Nitrate Co. v. Syndicate* (1899), 2 Ch. 392. But the liability of a promoter is predicated upon a violation of the trust relation, and the decision in the principal case is based upon the assumption that the contract was a private one between the signers of the subscription blanks and the promoters, the latter not occupying a fiduciary position towards the corporation. The distinction is a doubtful one, as the acts of the promoters were impliedly ratified by the company, the promoters themselves assuming the management of the same. Where a director sells property to the corporation at an excessive valuation, the company alone can take advantage thereof, a stockholder having no remedy. *Burland v. Earle* (1902) App. Cas. 83; but when the corporation is in control of the promoters, and the officers refuse to act, a suit by the stockholders will be sustained. *Flynn v. R. R. Co.,* 158 N. Y. 493; *Hawes v. Oakland,* 104 U. S. 450. Where there was a sale to the corporation by the promoters, the sale was rescinded, but it was held that equity would not compel the promoters to account for the profits. *Erlanger v. Phosphate Co.,* 3 App. Cas. 1219; but where new equities have arisen, the remedy is not a rescission of the contract, but an action for accounting. *Yale Stove Co. v. Wilcox,* 64 Conn. 101; *In re Olympic,* 2 Ch. 153. Undoubtedly the stockholders have a remedy in the nature of an action of deceit against the promoters. *Brewster v. Hatch, supra.*

DEATH BY WRONGFUL ACT—SURVIVAL OF TORT ACTION—CONFLICT OF LAWS.—SMITH V. EMPIRE STATE-IDAHO M. & D. CO., 127 FED. 462 (C. C.).—*Held,* that an action to recover damages against a master for the death of a servant while in the course of his employment by the master's alleged negligence is a transitory action to enforce a personal liability, which may be litigated in a State other than that in which the accident occurred.

The reasoning of this case seems to illustrate the trend of the law toward recognizing the transitory nature of such actions as a matter of right rather than of mere comity. Early cases in this country held that in absence of proof as to statutes of the State where the death occurred the common law will be presumed to be there in force, and other States will not apply their own statutory remedies to cases arising outside their own borders. *C. & W. I. Ry. Co. v. Schroeder,* 18 Ill. App. 328. So no remedy lay in Maryland for such death in Pennsylvania, the remedy being local and having no force nor vigor outside the State where the statute was made. *State v. Pittsburgh & C. Ry. Co.,* 45 Md. 41. On the other hand, while the foreign

statute has no extraterritorial force, rights under it, not contrary to the policy of Pennsylvania, will, by comity, be enforced by remedies according to Pennsylvania procedure. *Knight v. W. J. Ry. Co.*, 108 Pa. St. 250. And although at common law such actions abate upon the death of the person injured, yet where the statute of the State in which the injury was inflicted gives a right of action to the personal representatives of the deceased, that right may be enforced in another State having a similar statute. *Burns v. Grand Rapids & I. R. Co.*, 113 Ind. 169; 15 N. E. 230.

EMINENT DOMAIN—PROCEEDINGS BY THE UNITED STATES—DISMISSAL—DAMAGES.—UNITED STATES v. DICKSON, 127 FED. 774 (C. C.).—*Held*, that proceedings by the United States to condemn land for a public building or other governmental purpose may be dismissed at any time before the actual acceptance of the property and payment therefor, until which time there is no "taking" of the property, and the United States is not subject to the payment of costs or damages to the landowners on such dismissal.

Such costs and damages seem to have no existence independently of statutory enactments. Thus a municipal corporation which institutes condemnation proceedings against certain land, and abandons them six months later, is not liable for damages to the rental of the land caused by such delay, in the absence of any showing that the delay was unnecessary, or that there was malice or want of probable cause. *Feiten v. City of Milwaukee*, 47 Wis. 494; 2 N. W. 1148. So where a city proceeds under an ordinance to widen a street, and thereafter takes no steps in the premises, and an abutting owner, learning of the passage of the ordinances, tears away all the front of a building in front of his lot and rebuilds such front four feet further back, he cannot recover for the expense incurred from the city. *Whyte v. City of Kansas*, 23 Mo. App. 409. And where a railroad company dismisses an appeal in condemnation proceedings against the protest of the appellee, in the absence of a special contract or positive rule of law, there can be no recovery against the railroad company for services, time, or expenses incurred in defending against such condemnation proceedings. *Bergmann v. St. P., S. & T. F. Ry. Co.*, 21 Minn. 533.

EQUITY—STREET IMPROVEMENT—SETTING ASIDE ASSESSMENT.—FARR v. CITY OF DETROIT, 99 N. W. 19 (MICH.).—A city council paved a street in accordance with a petition which did not have enough signers to give the council jurisdiction. *Held*, that a property owner on the street cannot maintain an action in equity, after the work is completed, to have his assessment set aside. Grant, J., *dissenting*.

As a general rule assessments made without all the requisites of jurisdiction can be restrained, *Zeigler v. Hopkins*, 117 U. S. 683; *Dillon's Munic. Corps*, Sec. 400, Vol. 2. But a party may so act as to be estopped to deny the authority of the city officials. *Goodwillie v. City of Manistee*, 93 Mich. 170. As to what constitutes an estoppel, in such cases, however, there is a conflict. Some decisions hold that if the property owner simply knows that the work is going on he is estopped. *People v. City of Rochester*, 21 Barb. 656; *Fitzhugh v. Bay City*, 109 Mich. 581. Others, that he is not obliged to take any action till his rights are called in question. *Mulligan v. Smith*, 59